

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK A. GELAZELA,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 1:22-cv-01539-ADA-EPG (PC)

ORDER STRIKING SECOND AMENDED
COMPLAINT IN THIS ACTION AND
DIRECTING CLERK TO DOCKET SECOND
AMENDED COMPLAINT FROM CASE NO.
1:22-CV-01540 IN THIS ACTION

(ECF No. 12)

Mark Gelazela (“Plaintiff”) is a former prisoner proceeding *pro se* and *in forma pauperis* in this action. Following a review of docket entries in this action and in Gelazela v. United States, E.D. CA, Case No. 1:22-cv-01540 (“Gelazela II”), the Court proceeds to correct a filing error by Plaintiff.

I. RELEVANT BACKGROUND

On December 1, 2022, in Gelazela v. United States of America, E.D. CA, Case No. 1:21-cv-01499 (PC), District Judge Anthony W. Ishii issued an Order Adopting Findings and Recommendations and Order Severing Claims and Directing Clerk to Open New Actions. Id. at ECF No. 24. This order was also filed in this action.

As relevant, Judge Ishii ordered that:

5. Plaintiff’s claims that are currently identified as Claim III, Claim IV, and Claim V are severed from the claims proceeding in this case.

6. Plaintiff’s claim that is currently identified as Claim VI is severed from the claims proceeding in this case.

1 7. The Clerk of Court is directed to:

2 a. Open two new § 1983 actions for Plaintiff.
3 b. Assign a random magistrate judge to both actions.
4 c. File and docket a copy of the following in both newly opened actions:
5 the order granting Plaintiff's application to proceed *in forma pauperis*
6 (Doc. No. 11); Plaintiff's First Amended Complaint (Doc. No. 13); the
7 screening findings and recommendations (Doc. No. 20); and this order.
8 d. Provide Plaintiff with the case numbers for the newly opened actions.

9 8. Plaintiff has thirty days from the date the first new case is opened to file an
10 amended complaint that only includes Claim[] III, Claim IV, and Claim V. The
11 amended complaint shall be **no longer than twenty pages**.

12 9. Plaintiff has thirty days from the date the second new case is opened to file an
13 amended complaint that only includes [C]laim VI. The amended complaint shall
14 be **no longer than twenty pages**.

15 11 Gelazela v. United States of America, E.D. CA, Case No. 1:21-cv-01499-AWI-EPG (PC),
16 ECF No. 24, pgs. 2-3 (footnote omitted).

17 13 As a result of Judge Ishii's Order, this action was the first new case that was opened, and
18 14 Gelazela II was the second new case. Because this action is the first new case, Plaintiff's SAC
19 15 should include only Plaintiff's claims previously identified as Claim III, Claim IV, and Claim V.
20 16 However, Plaintiff's Second Amended Complaint (ECF No. 12) in this case only includes Claim
21 17 VI. Plaintiff's Second Amended Complaint in Gelazela II includes Claim III, Claim IV, and
22 18 Claim V. Id. at ECF No. 12. Thus, Plaintiff failed to comply with Judge Ishii's order.

23 19 To correct Plaintiff's mistake and what amounts to a technical violation of Judge Ishii's
24 20 order, the Court will strike Plaintiff's Second Amended Complaint in this case and direct the
25 21 Clerk of Court to docket the Second Amended Complaint that was filed in Gelazela II in this
26 22 case.

27 23 **II. CONCLUSION AND ORDER**

28 24 For the reasons stated above, **IT IS HEREBY ORDERED** that:

29 25 1. The Second Amended Complaint in this action (ECF No. 12) is STRICKEN;

30 31 \\\

32 33 \\\

1 2. The Clerk of Court shall docket the Second Amended Complaint that was filed in
2 Gelazela v. United States, E.D. CA, Case No. 1:22-cv-01540, at ECF No. 12, in this
3 action. The Second Amended Complaint shall be given a new ECF number but
4 maintain the date filed.

5
6 IT IS SO ORDERED.

7 Dated: January 11, 2023

8 _____
9 /s/ *Eric P. Groj*
10 UNITED STATES MAGISTRATE JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28